

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

FREDERICK BANKS,

CIVIL NO. 16-1947 (JRT/JSM)

Plaintiff,

v.

REPORT AND RECOMMENDATION

HON. RICHARD W. ROBERTS, et al.,

Defendants.

JANIE S. MAYERON, United States Magistrate Judge

Plaintiff Frederick Banks, a prisoner, did not pay the required filing fee for this case, but instead filed an application seeking leave to proceed *in forma pauperis* ("IFP"). See Docket No. 2. In an order dated June 15, 2016, this Court found that Banks was prohibited from proceeding IFP in this litigation on account of the three-strikes provision of 28 U.S.C. § 1915(g). See Docket No. 3. Banks was given until July 8, 2016 to pay the \$400 filing fee and proceed as a non-IFP litigant, failing which it would be recommended that this action be dismissed without prejudice for failure to prosecute. See Fed. R. Civ. P. 41(b).

That deadline has now passed, and Banks has not paid the required filing fee. Further, none of the documents submitted by Banks since establishes that he is entitled to proceed IFP in this litigation; it remains the case that Banks is subject to § 1915(g) and that this lawsuit does not fall within any exception to that provision. Accordingly, this Court now recommends, in accordance with its prior order, that this action be dismissed without prejudice under Rule 41(b) for failure to prosecute. See *Henderson v. Renaissance Grand Hotel*, 267 Fed. App'x 496, 497 (8th Cir. 2008) (per

curiam) (“A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff’s failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.”).

RECOMMENDATION

Based upon the foregoing, and on all of the files, records, and proceedings herein, IT IS HEREBY RECOMMENDED that this action be DISMISSED WITHOUT PREJUDICE under Fed. R. Civ. P. 41(b) for failure to prosecute.

Dated: July 12, 2016

s/ Janie S. Mayeron
JANIE S. MAYERON
United States Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. LR 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in LR 72.2(c).

Under Advisement Date: This Report and Recommendation will be considered under advisement 14 days from the date of its filing. If timely objections are filed, this Report and Recommendation will be considered under advisement from the earlier of: (1) 14 days after the objections are filed; or (2) from the date a timely response is filed.